J. RAJU A/L M. KERPAYA @ JAYARAMAN A/L M. KERPAYA

v.

KWONG YIK BANK BERHAD & ANOR.

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD HASHIM,
DATO' PEH SWEE CHIN,
DATUK WIRA WAN YAHYA BIN PAWAN TEH SCJJ
[CIVIL APPEAL NO. 02-552-1991]
6 MAY 1994

LAND LAW: Land sold by public auction - Chargees successful bidders at auction - Allegations of breaches of conditions of sale - Chargor entering private caveat subsequent to sale - Application for removal of caveat - Appeal against order for removal of the caveat.

The appellant, the proprietor of a piece of property (the Land), charged the land to the respondents. Forclosure proceedings were taken out by the chargees but were aborted 3 times for various reasons. At the 4th. auction sale the chargees bid for the property was accepted inspite of the fact that the chargees had not deposited the required 10% of the reserve price prior to the auction sale as required by the conditions of sale.

The appellant further complained that he was not notified of the date of the auction sale and entered a private caveat against the Land on the grounds of the breaches of the conditions of sale.

In the meantime the chargees had sold the Land to a third party who then entered a caveat against the Land. The chargees' application for the removal of the appellant's caveat was allowed with costs and this is the appellant's appeal against the High Court decision.

Held:

[1] In an application under s. 327 of the National Land Code 1965 by a caveatee for the removal of a caveat, the *onus* lies upon the caveator to satisfy the Court that he has a caveatable interest in the land concerned. Based upon the *ratio* in previous cases, the chargor in this case would have a caveatable interest if he could satisfy the Court that his claim to the interest in the property would raise a serious question to be tried.

[2] Considering all the issues raised by the chargor and the reply deposed to by the chargees, there exists conflict of evidence, which appears on the face of it not to be inherently improbable. Such conflict cannot be disposed of on the basis of the affidavit evidence alone and should be determined at a proper trial.

[3] The evidence before the learned Judge left serious questions to be tried and the learned Judge should have maintained the *status quo* between the parties until the determination of these disputes.

[Appeal allowed with costs. Order of the High Court set aside. Caveat ordered to remain until final disposal of suit No S-3-22-63-1991].

[Bahasa Malaysia Translation of Headnote]

UNDANG-UNDANG TANAH: Tanah dijual melalui lelongan awam - Pemegang gadaian berjaya menjadi penawar-belinya - Pengataan kemungkiran syarat-syarat jualan - Penggadai memasukkan kaveat persendirian berikutan dengan jualan tersebut - Permohonan untuk mengeluarkan kaveat - Rayuan terhadap perintah untuk mengeluarkan kaveat.

Perayu, tuanpunya sebuah harta (tanah tersebut), telah menggadaikan tanah tersebut kepada responden. Tindakan menghalang tebus telah diambil oleh pemegang gadaian tetapi digugurkan sebanyak tiga kali atas beberapa sebab. Di lelongan yang keempat pemegang gadaian telah menawar untuk harta tersebut dan diterima walaupun pemegang gadaian tidak mendepositkan 10% daripada harga rizab tersebut sebelum lelongan diadakan sebagaimana yang diwajibkan oleh syarat-syarat jualan.

Perayu seterusnya mengadu bahawa beliau tidak dimaklumkan mengenai tarikh lelongan dan telah memasukkan kaveat persendirian ke atas tanah tersebut atas alasan-alasan kemungkiran syarat-syarat jualan.

Sementara itu, pemegang gadaian telah menjual tanah tersebut kepada sebuah pihak ketiga yang kemudiannya memasukkan kaveat ke atas tanah tersebut. Permohonan pemegang gadaian untuk mengeluarkan kaveat perayu telah dibenarkan dengan kos dan ini merupakan rayuan perayu terhadap keputusan Mahkamah Tinggi.

Diputuskan:

[1] Dalam permohonan di bawah s. 327 Kanun Tanah Negara 1965 oleh penanggung kaveat untuk mengeluarkan kaveat, bebannya terletak

ke atas pengkaveat untuk memuaskan Mahkamah bahawa ia mempunyai kepentingan berkaveat ke atas tanah yang berkenaan. Berdasarkan kepada nisbah dalam kes-kes sebelum ini, penggadai dalam kes ini tentu mempunyai kepentingan berkaveat jika ia dapat memuaskan Mahkamah bahawa tuntutannya ke atas kepentingan dalam harta tersebut akan membangkitkan persoalan yang serius untuk dibicarakan.

[2] Melihat kepada isu-isu yang dibangkitkan oleh penggadai dan jawapan yang dikemukakan oleh pemegang-pemegang gadaian, maka wujud percanggahan keterangan, di mana pada zahirnya tertera sebagai tidak perlu diragui secara sedia ada. Percanggahan sedemikian tidak boleh diselesaikan berdasarkan kepada keterangan afidavit sahaja, tetapi mestilah diputuskan melalui perbicaraan yang sempurna.

[3] Keterangan di hadapan Hakim yang bijaksana tersebut meninggalkan persoalan yang serius untuk dibicarakan dan Hakim tersebut haruslah mengekalkan *status quo* di antara pihak-pihak tersebut sehinggalah pertikaian berkenaan diselesaikan.

[Rayuan dibenarkan dengan kos. Perintah Mahkamah Tinggi diketepikan. Kaveat diperintahkan kekal sehingga guaman No. S-3-22-63-1991 diselesaikan secara muktamad].

Cases referred to:

Karuppiah Chettiar v. Subramaniam [1971] 2 MLJ 116 ***(refd)***

Temenggong Securities Ltd. & Ors. v. Registrar of Titles, Johor & Ors. [1974] 2 MLJ 45 ***(refd)***

Macon Engineers Sdn. Bhd. v. Goh Hooi Yen [1976] 2 MLJ 53 ***(refd)***

Macon Works & Trading Sdn. Bhd. v. Phang Hon Chin [1976] 2 MLJ 177 ***(refd)***

Sing Lian Express Sdn. Bhd. v. Soh Kim Tee [1974] 2 MLJ 24 ***(refd)***

R.A.P. Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors. [1980] 1 MLJ 248 ***(refd)***

Krishna Kumar v. UMBC Bhd. [1983] 1 MLJ 106 ***(refd)***

UMBC Bhd. v. Development and Commercial Bank (Ltd) Bhd. [1983] 1 MLJ 165 ***(refd)***

Jit Kaur v. Parl Singh [1974] 2 MLJ 199 ***(refd)***

M & J Frozen Food Sdn. Bhd. & Anor. v. Siland Sdn. Bhd. & Anor. [1994] 1 SCR 197, [1994] 1 AMR 4: 137 ***(refd)***

Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212 ***(refd)***

Legislation referred to:

National Land Code 1965, ss. 12, 258(1)(a), 259(2)(c), 269(1), 323(1)(a), (b), (c), 327, 340

For the appellant - Dennis Xavier (Rafie bin Omar with him); M/s Jayaraman, Ong & Co.

For the respondents - Wong Chong Wah (Leong Wai Hong with him); M/s Skrine & Co.

JUDGMENT

Wan Yahya bin Pawan Teh SCJ:

On 16 December 1991 the High Court at Kuala Lumpur allowed the application by the respondents (the chargees) for the removal of a caveat made under s. 327 of the National Land Code. The appellant (chargor) is dissatisfied with that decision.

The events that transpired between the parties in so far as they are relevant to the present appeal are as follows:

The appellant was the registered proprietor of a property held under Geran No 12088, Lot 76, Sek. 89, Bandar Kuala Lumpur, Wilayah Persekutuan (the property) which was charged to Perwira Habib Bank Berhad and Kwong Yik Bank Berhad (the chargees), both chargees ranking *pari passu* with the other.

Foreclosure proceedings were taken out by the chargees in the High Court Kuala Lumpur and an order of sale was issued on 7 February 1986. The auction sale subsequently fixed for 3 July 1987 (1st auction sale) had to be called off because the chargor had on the same day obtained an interim injunction restraining the conduct of the sale. The injunction was later dissolved by Ajaib Singh J. (as he then was) on 7 August 1987 and the auction sale was ordered by the same Judge to take place on 29 October 1987 (2nd auction sale), such sale to be so in accordance with summons for directions dated 22 January 1987 (p. 146). On the 2nd auction sale, there was no bidder and the auction was postponed. On 13 July 1988, the plaintiff wrote to the Senior Assistant Registrar (SAR) asking for a new auction date and the third auction sale was fixed for 20 October 1988, copies of these letters were not extended to the chargor. According to the chargees' affidavit the 3rd auction sale was again called off because of some differing particulars appearing in the proclamation of sale and in the Court files. On 19 October 1988 (after a lapse of about 1 year) the SAR by letter (exbt B3) appointed the same auctioner to conduct the sale on 25 November 1988 (the 4th auction sale).

The 4th auction was subject to conditions of sale allegedly on similar terms as the previous one

prepared in the second auction sale. The relevant conditions applicable to our present case are:

> 2. The chargee be and is hereby at liberty to bid at the sale **and in the event** of him becoming the purchaser **to set off** the purchase price against the **amount due** on the said charge on the said date of sale, plus the costs and expenses of the sale plus all costs due from the chargor by way of cost in this order of sale.
> 3. No bid shall be less in advance of the previous bid than a sum to be fixed by the Penolong Kanan Pendaftar, Mahkamah Tinggi Kuala Lumpur, at the time of sale and no bid shall be retracted.
> 4. All **intending bidders** are required to deposit with the Penolong Kanan Pendaftar, Mahkamah Tinggi Kuala Lumpur, 10% of the fixed Reserve Price for the said property by Bank Draft in favour of the Penolong Kanan Pendaftar, Mahkamah Tinggi Kuala Lumpur, **prior** to the auction sale.
>
> (Emphasis added).

The chargees who were the highest bidders at the sale did not pay the 10% deposit. Nevertheless the SAR declared them to be the successful bidders presumably on the same reason as given in the chargees' affidavit that they were entitled to set off that amount against the sum due on the charge. It was not until three days later i.e. on 28 November 1988 that the chargees paid a sum of RM250,000.

The chargor who claimed that he was not notified of the date of auction sale and aggrieved by the breaches of its conditions entered a private caveat which was registered on 5 June 1989.

The certificate of sale was not exhibited in any affidavit but it would appear from the letter written by the chargees' solicitor to the Deputy Registrar High Court Kuala Lumpur dated 30 May 1989 that although the certificate of sale was issued on 30 March 1989, registration of which was refused by Pemungut Hasil Tanah, Wilayah Persekutuan on some technical error. Registration of the sale was subsequently entered sequently after the registration of the chargor's caveat and peculiarly endorsed with the statement "catatan dalam daftar pada 18 April 1989 jam 10.20 pagi."

On 7 August 1989 about two months after the chargor's caveat was entered, the chargees entered into an agreement to sell the said property to Mitsubishi Corporation for RM3,782,586. Mitsubishi has since filed another caveat on the property. We are not concerned with Mitsubishi's caveat in this appeal.

The chargees consequently made an application for the removal of the caveat dated 5 June 1989 entered by the chargor. The application was heard and an order in terms of the application was made by the High Court on 16 December 1991. The chargor appealed.

At the end of the hearing in the High Court, the trial Judge noted:

> The evidence is that the plaintiffs have divested their interest in the land - There is no caveat to be entered. Caveat was wrongly entered. Application allowed with costs.

It would appear from this that the learned trial Judge was unduly concerned with the submission of Counsel for the chargees regarding the subsequent sale of the property from the chargees to Mitsubishi, although the matter was not raised in the affidavits filed by the chargees. In fact para 17 of the affidavit of Tan Cheong Eng, Assistant General Manager of the 1st chargee (1st plaintiff's company in the High Court O/S) affirmed on 31 May 1990 and filed in support of the plaintiff's application reads:

> 17. The plaintiffs have entered into a contract with Mitsubishi Corporation for the sale of the land in question. My affidavit of 19 December 1989 did not mention the said sale as I have been advised and verily believe that it has **no relevance** to the issues if any between the plaintiffs and the defendant herein.
> (Emphasis added)

It is obvious from the above paragraph that the sale to Mitsubishi was never intended to be one of the chargees' ground in their application under s. 327 of the National Land Code. Even if the matter had been raised, the affidavit evidence indicated only the payment of 10% deposit by Mitsubishi. Despite the references in the affidavits of both parties that Mitsubishi was the purchaser of this property, there was nothing in evidence to show on which date the balance of the purchase price was paid and when the document of transfer was signed.

It must be appreciated that in a transaction of sale of land under our Torrens System, the estate and interest in the land remained with the registered proprietor until he has done all that is necessary to divest the estate out of himself and vest it on the transferee.

According to our local authorities, the vendor of the land is only regarded as having divested himself of the beneficial interest in his land and vested it on the purchaser at the time when the purchase money has been paid in full - *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ 116; *Temenggong Securities Ltd. & Ors. v. Registrar of Titles, Johor & Ors.* [1974] 2 MLJ 45.

As these questions on full payment and execution of transfer documents were not available before the Court, the learned trial Judge was therefore not in a position to come to the conclusion, as he did, that the property had been divested to Mitsubishi and for that reason conclude that there was nothing left for the chargor to caveat on.

Notwithstanding this error, we feel disposed to look into the entire records to determine the merits of the application.

In this application under s. 327 of the National Land Code by a caveatee for the removal of a caveat, the *onus* lies upon the caveator to satisfy the Court that he has a caveatable interest in the land. Section 323(1) of the National Land Code lists out the persons at whose instance a caveat may be entered as:

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

However in various recent cases the Courts have given the section, in particular, sub-section (1)(a) a wider and liberal interpretation to include purchasers of land, company owners, chargees, tenants and even an option holder - see *Macon Engineers Sdn. Bhd. v. Goh Hooi Yen* [1976] 2 MLJ 53; *Macon Works & Trading Sdn. Bhd. v. Phang Hon Chin* [1976] 2 MLJ 177; *Karuppiah Chettiar v. Subramaniam* [1971] 17 MLJ 209 and *Sing Lian Express Sdn. Bhd. v. Soh Kim Tee* [1974] 2 MLJ 24. The rationale behind these interpretations on the caveatee's interest was stated by Hashim Yeop Sani J. (as he then was) in *Macon Works* case *(supra)* [1976] 2 MLJ at p. 182 as follows:

> It is of interest to note that in this case a caveat is in existence in respect of the said land and no action has been taken by the defendants for an order to remove the caveat on the grounds that the plaintiff has no interest in the terms of the Land Code 1965 for capacity to lodge the caveat. It has been well established that as far as our Land Code is concerned the whole system of caveat is founded on the principle that they exist for the protection of alleged as well as proved interest and therefore not only is a person who has a right to a registrable interest in land who may enter a caveat but also any person claiming title to it or any registrable interest in any alienated land or even claiming only a right to such title or registrable interest may enter a caveat - see *Mahandevan & Anor. v. Patel*, also *Jit Kaur v. Parl Singh, Nanyang Development (1966) Sdn. Bhd. v. How Swee Poh* and *Inter-Continental Mining Co. Sdn. Bhd. v. Societe Des Etains De Bayas Tudjuh*.

The above pronouncement on caveatable interest was echoed by Syed Agil J. (as he then was) in *R.A.P. Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors.* [1980] 1 MLJ 248 at 251 where his Lordship said:

> Now, the whole system of caveats is founded on the principle that they exist for the protection of alleged as well as for proved interests and of interests that have not yet become actual interests in land...

Yet another dimension of the application of s. 323(a) is to be found in *Krishna Kumar v. UMBC Bhd.* [1983] 1 MLJ 106. In that case the applicant gave MBF the 1st charge on his land and had agreed to create a second charge over it in favour of UMBC conditional upon MBF's consent. Although the instrument relating to the second charge was duly prepared and executed, the papers could not be presented for registration because of MBF's subsequent refusal to give the consent. In holding that UMBC was entitled to enter a caveat, Gunn Chit Tuan, J. (as he then was) said at p. 108 I [1983] 1 MLJ:

> The fact that MBF had not endorsed its consent on an annexure to the said charge which might therefore not be accepted by the relevant administrative authorities, did not in my view detract from the fact that it is an instrument of charge in registrable form and that even if the relevant authorities had refused to accept it for registration, nevertheless the bank had in my judgment a registrable interest in the said lands within the meaning of s. 323(1)(a) of the National Land Code 1965.
>
> Even if it is considered that the bank did not have any registrable interest in the said lands

> because the charge in question was not in a statutory form which complied with the relevant provisions of the National Land Code 1965, I was of the view that this case was also covered by the last limb of s. 323(1)(a) of the said National Land Code. In this case, even if it was considered that the bank had no registrable interest because the relevant charge was not in a registrable form without MBF's consent, I considered that in the circumstances of this case, the bank had a right to such registrable interest ...

Although the first issue of the above cited passage was not followed in the Federal Court case of *UMBC Bhd. v. Development and Commercial Bank (Ltd) Bhd.* [1983] 1 MLJ 165, in which it was held that failure to obtain consent of the 1st chargee did not constitute a caveatable interest, we are of the view that the second proposition of law i.e. a mere right to registrable interest (as opposed to proved right to registrable interest) is sufficient ground for invoking that provision of s. 323(1)(a).

To the extent or degree indicated these cases had dealt with the existence of caveatable interests arising out of the conduct of disputes between the actual parties to the charges, (purchasers, owners etc.) themselves but not on account of some misapplication of the law, misdirection or serious impropriety by the officers appointed under s. 12 of the National Land Code or other officers of the Court in particular those exercising the powers relating to the sale and registration of lands under the Code.

In an earlier case, *Jit Kaur v. Parl Singh* [1974] 2 MLJ 199 Hashim Yeop A. Sani J. (as he then was) held that the proposed action of a party to challenge the transfer of his land to another constituted sufficient ground for the entry of a private caveat.

At p. 201 E of his judgment, the learned Judge said:

> The respondent is one of the beneficiaries of Gurdial Singh s/o Cherah Singh. See also his statutory declaration in respect of his application to enter the caveat - (Exhibit 'A' in affidavit affirmed on 24 February 1973). He is at the moment also one of the holders of letters of administration of the estate of the said Gurdial Singh s/o Cherah Singh (deceased) and is seeking to challenge the validity of transfer of this land. The respondent is in my view a person entitled to apply to enter a private caveat under s. 323(1) of the National Land Code.

Jit Kaur's case however involves the alleged wrong doing by one party to a land transfer and not one involving errors or actions which are *ultra vires* the National Land Code committed by any officer appointed under s. 12 of the National Land Code or officer of the Court. We are of the view that a person who is entitled to initiate an action for a declaratory decree affecting his rights under the National Land Code is just as entitled as a person seeking for a specific performance or an injunction to enter a caveat pending the disposal of his suit.

Recently in *M & J Frozen Food Sdn. Bhd & Anor. v. Siland Sdn. Bhd. & Anor.* [1994] 1 SCR 197, [1994] 1 AMR 4:137, this Court upheld the declaratory decree and the consequential reliefs granted by Johor Bahru High Court in respect of an improper auction sale by a SAR who was found to have acted *ultra vires* the National Land Code. In the same manner we hold that the chargor in this case would have a caveatable interest if he could satisfy the Court that his claim to the interest in the property would raise a serious question to be tried. See *Eng Mee Yong & Ors v. V. Letchumanan* [1979] 2 MLJ 212.

It is therefore incumbent upon us to go into the affidavit evidence of the parties to determine this issue. It was not disputed that the 1st auction sale scheduled for 3 July 1987 was aborted by an interim injunction and the second auction sale was to have taken place on 29 October 1987 after the injunction was dissolved. The 2nd auction sale was again aborted as there was no bidder. The SAR at the request of the chargees, then appointed an auctioneer and fixed the third auction sale on 20 October 1988. However there was nothing on record to show that the appointed date was ever communicated to the chargor. The third auction sale was also aborted because of some discrepancies between the proclamation of sale and the summons for directions. The 4th auction sale was scheduled on 25 November 1988 i.e. after a lapse of about 1 year and 3 months from the 1st auction sale. As transpired at the 3rd auction sale, there appeared to be no notice at all given to the chargor regarding the 4th auction sale date.

The chargor's first complaint is that as he was not notified of the date of the auction sale, he was deprived from exercising his right to redeem the property - a right which was open to him until the fall of the hammer. The requirement to serve a copy of the order of the Court on

the chargor is provided initially by s. 258(1)(a) of the National Land Code. The provision in s. 259(2)(c) as regards subsequent sale however are silent on this particular requirement although there is a specific requirement for the sale to be publicly advertised in the same manner as previously directed. To our minds the mere omission by the Legislature to mention a specific procedure will not detract from the principle that such direction by an officer of the Court has to be exercised judiciously after giving the parties the opportunity of being heard.

Moreover, the order made by the SAR on 22 January 1987 consequent to the order of the Judge dated 7 February 1986 did specifically provide that in the event of the sale being abortive, the matter should be adjourned and a date fixed for further directions. This, we feel, is a strong indication of an obligation to hear both parties, and in particular the chargor before the SAR proceeded to issue any directions involving any change in the conditions or value of the property.

The first directions for the property to be sold at a reserved price of RM2,825,000 was made on 22 January 1987 and the subsequent directions for it to be sold at a reserved price of RM2,500,000 was made sometime in October 1988 - a lapse of 1 year and 9 months. During this period, there could be either an appreciation or depreciation of the property in respect of which value, the chargor was entitled to be heard. It was also alleged by the chargor that the new directions of sale differed from the previous one, in which case he should have been served with the amended conditions of sale. This allegation does not seem to be entirely baseless and could be more conveniently dealt with in a proper trial.

Another allegation raised by the chargor in his memorandum of appeal, is on the failure by the SAR to ensure the requisite payment of deposit in compliance with the conditions of sale before any rights of set-off against the sums due can be exercised. The order was initially made on 22 January 1987 before the first auction sale. The proclamation of sale in respect of the 4th auction sale which came after the aborted 1st, 2nd and 3rd auction sales merely adopted the same conditions despite the express provision for the SAR's to give further directions in the order dated 22 January 1987. Assuming for a moment that the conduct of the 4th auction sale without further directions was valid, we are nevertheless faced with the allegation of non-compliance with its conditions of sale.

Paragraph 2 of the conditions of sale in the 4th auction sale, as reproduced in the earlier paragraph of this judgment, allows the chargees merely to set off the purchase price against the amount due on the charge "in the event of him becoming a purchaser". To our minds these words can be taken to mean that the right to set off could only arise at that stage when the chargees were declared the successful bidders or purchasers and certainly not before then. Our view on this interpretation is further reinforced by the term of para 4 of the conditions of sale which requires "all intending bidders" to deposit 10% of the reserve price with the SAR. The term 'all intending bidders' must necessarily include the chargees who had not at that moment even bidden let alone become a purchaser. Such construction is to our minds, consistent with the concept of an impartial need to put every bidder on the same footing and on equal terms in a public auction.

From the affidavits and documents exhibited in the Appeal Records, it would appear that the conditional sum of RM250,000 being the 10% of the reserve price was not deposited with the SAR before the auction sale held on 25 November 1988. Instead, a sum of RM2,000 being the mandatory cost payable under the order made on 22 January 1987 was paid before the sale and a further RM250,000 was only paid 3 days after (and not before) the sale. Under the circumstances, we feel that there is yet another serious triable issue raised by the chargor.

The third issue which challenged the *bona fides* conduct of the chargees and the subsequent buyer, Mitsubishi is by no means frivolous. The affidavit evidence indicate that the auction sale was held on 25 November 1988 and the caveat by the chargor was entered on 5 June 1989. The entry regarding the sale was then entered in sequence after the caveat but was wrongly dated 18 April 1989. From the sequence of events in the Register and the letter from Jabatan Tanah Wilayah Persekutan dated 30 May 1989 as (exhibited at p. 317 Appeal Records) it would appear that the attempt to register the sale in accordance with ss. 269(1) and 340 of the National Land Code, was initially refused and was eventually registered after the entry of the chargor's caveat. The subsequent agreement of sale to Mitsubishi was dated 7 August 1989 i.e.

3 months after the entry of the chargor's caveat. These events which could lead to the question of indefeasibility and notice are again matters to be dealt with at a proper trial.

Considering all the issues raised by the chargor and the reply deposed to by the chargees, we are satisfied that there exists conflict of evidence, which appears to us on the face of it not to be inherently improbable. We are of the view that such conflict cannot be disposed of on the basis of the affidavit evidence alone and that such conflict should be determined at a proper trial. We agree with the chargor's Counsel's submission that the evidence before the Judge left serious questions to be tried and that he should have maintained the *status quo* between the parties until the determination of these disputes.

We therefore allow this appeal, set aside the order of the High Court and direct the cavet to remain until the final disposal of suit No. S-3-22-63-1991. The respondent shall pay the cost here and in the Court below. The deposit is to be returned to the appellant/chargor.

LEONG WAN YING @ LEONG MUN YING & ANOR.

v.

ABDUL JABBAR BIN ABDUL MAJID & ANOR. (RECEIVERS AND MANAGERS OF LEMO SDN. BHD.)

SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD HASHIM, DATO' PEH SWEE CHIN, DATUK WIRA WAN YAHYA BIN PAWAN TEH SCJJ
[CIVIL APPEAL NO. 02-400-1991]
6 MAY 1994

INJUNCTION: Supreme Court granting injunction restraining disposal of land without leave of High Court - Receivers and managers applying for and obtaining leave from High Court - Whether leave properly granted - Whether granting of leave was in breach of Supreme Court injunction.

The appellants were the majority shareholders of Lemo Sdn. Bhd. (Lemo). The appellants and another entered into a sale and purchase agreement with one Nestra Plantations Sdn. Bhd. (Nestra) for the sale of their respective shares in Lemo. Upon Nestra's failure to pay the full purchase price, the appellants sued for the purchase price of the shares, which suit (the Seremban suit) has yet to be heard.

The appellants subsequently applied for the appointment of a Receiver to manage Lemo, with a view to its continuation as a going concern, until the disposal of the Seremban suit. This was done so as to safeguard Lemo's only asset, an oil palm plantation (the Land). The appellants' application was granted but on appeal the Supreme Court vacated the High Court order by consent and granted an injunction restraining Nestra and Lemo from disposing of the Land without leave of the High Court, until the final disposal of the Seremban suit filed by the appellants.

On 11 May 1989 the Receivers and Managers, appointed by the Bank under the provisions of the two debenture agreements signed by Lemo, applied for leave to dispose of the Land. The learned Judge held that the appellants had no *locus standi* to object to the application as they had ceased to be shareholders of Lemo and granted leave to the Receivers on the grounds that to sell the Land by private treaty would not be in breach of the Supreme Court injunction.